

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 4:16-CR-66 RLW
)
OLEKSANDR ZYUZ,)
)
Defendant.)
)
)

ORDER ON MOTION FOR SENTENCE REDUCTION UNDER 18 U.S.C. § 3582(c)(1)(A)
(COMPASSIONATE RELEASE)

Upon motion of the defendant the Director of the Bureau of Prisons for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission,
IT IS ORDERED that Defendant's Motion for Compassionate Release, (ECF No. 1009), is:

DENIED after complete review of the motion on the merits.

FACTORS CONSIDERED (Optional)

On February 21, 2018, Defendant pleaded guilty to two counts of conspiracy to possess and distribute contraband cigarettes and the associated transportation, receipt, possession, distribution of contraband cigarettes in violation of 18 U.S.C. §§ 2, 371, 2342, and 2344. On May 24, 2018, the Court sentenced Defendant to 60 months imprisonment with three years of supervised release. Defendant was ordered to pay \$19,715,670.00 in restitution.

Defendant is a 59-year-old, Ukrainian citizen, presently serving his sentence at Beckley FCI in West Virginia, with a projected release date of October 8, 2022.¹

Defendant has not established an extraordinary and compelling reason for compassionate release. Defendant cites health concerns and the pandemic as the reasons he is seeking release. According to record, Defendant's health problems include hypertension, aortic valve sclerosis, and peripheral vascular disease. In addition, in 2016, Defendant was involved in an accident at work and suffered injuries to his neck, lower back, right shoulder, right knee, right elbow, right hip, and right ring finger. Defendant was pronounced functionally disabled and was prescribed naproxen and baclofen for his injuries. Defendant asserts that his chronic medical conditions place him at a higher risk of severe illness or death from COVID-19.

Defendant receives care for his medical conditions and injuries through the Bureau of Prisons ("BOP"), but significantly, Defendant has refused the COVID 19 Pfizer-BioNTech vaccine, which was offered to him by the BOP. (ECF No. 1054 at 3). There is nothing in the record to suggest that Defendant refused the vaccine for medical reasons or religious purposes.

Based on the record before the Court, there is no evidence Defendant is suffering from a severe medical condition that presents an extraordinary and compelling reason to warrant modification of his sentence and immediate release from custody. The Centers for Disease Control and Prevention ("CDC") does list chronic heart conditions, such as hypertension, as potentially increasing the risk for serious illness or death from COVID-19 and recommends persons with such

¹When Defendant originally filed his motion, he was being housed at Moshannon Valley Correctional Facility. Sometime thereafter, he was transferred to Beckley FCI. Defendant submitted a request for compassionate relief from the Warden at Moshannon Valley Correctional Facility, which was denied. There is no record Defendant submitted a request for compassionate release at Beckley FCI, the facility at which he is currently housed. The government, however, does not oppose Defendant's motion on the ground that Defendant failed to exhaust his remedies.

conditions to take precautions, such as keeping current with vaccines and wearing a mask.² Defendant, however, refused the vaccine he was offered. Furthermore, there is nothing in the record to suggests that he is not receiving the care he needs. Based on the record before the Court, it appears Defendant receives regular care for his medical conditions and injuries at the BOP.

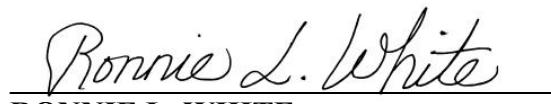
The Court recognizes Beckley FCI had an outbreak of COVID-19, but currently the facility is operating at a Level One. As of April 5, 2022, there were no active cases of COVID 19 in the inmate population or staff. See <https://www.bop.gov/coronavirus/> (last visited April 5, 2022). The BOP has instituted a number of procedures designed to control the spread of the virus, including the administration of over 300,000 dosages of the COVID-19 vaccine. The BOP efforts appear to be effective at controlling the spread of COVID-19 at Beckley FCI.

The fact of the pandemic does not constitute extraordinary and compelling circumstances that can allow all prisoners to be released. The risks Defendant relies upon to support his Motion would apply to him whether he is in custody, at a halfway house, or anywhere in the community. Furthermore, Defendant's arguments regarding his health and the increased risks he faces from the COVID-19 virus are undermined by his refusal to receive the vaccine as recommended by the CDC.

²See CDC, *People with Certain Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>, (last visited April 5, 2022).

Based on the foregoing, a reduction of sentence is not warranted under 18 U.S.C. § 3582(c)(1)(A) or the First Step Act for extraordinary and compelling reasons. For these reasons, Defendant's Motion for compassionate release is denied. (ECF No. 1009)

IT IS SO ORDERED.


RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

Dated this 5th day of April, 2022.